

# Request for Proposals



## Transit Operations Sunday Service

**Funded Through FTA's JARC Grant and  
Prop A Local Return Funds**

**In the City of El Monte, County of Los Angeles  
State of California**

**March 17, 2014**

### **City of El Monte**

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## **SECTION 1. INTRODUCTION AND GENERAL INFORMATION**

The City of El Monte (hereafter referred to as “the City”) is soliciting proposals from qualified firms to provide transportation services (hereby referred to as RFP) as outlined in Section 3. All proposals shall be for the complete management, maintenance (if applicable) and operation of El Monte Transit’s Sunday Fixed-Route Transit Service.

## **SECTION 2. BACKGROUND**

The City of El Monte is the tenth largest city in Los Angeles County with a population of approximately 113,475 residents. The City is located east of Los Angeles in the San Gabriel Valley and lies between two major freeways.

### **Fixed-Route Service Description**

El Monte Transit, formally known as the El Monte Trolley Company (soon to be rebranded), began operation in December 1988 with four routes. Since then El Monte Transit has seen significant growth including the introduction of an additional route in November 1990.

The service is currently operated Monday – Saturday, but with a newly awarded FTA grant, Sunday service will be provided with a new contract, mimicking current Saturday services.

Funding for this program is provided by Proposition A Local Return funds and FTA’s JARC Grant.

Monday through Saturday fixed-route transit service is currently provided under contract with Southland Transit, Inc.

### **Existing Routes**

#### **RED ROUTE**

The Red Route has been in operation since 1988. The Red Route operates in a clockwise loop through the northwest portions of El Monte (See **Exhibit A**). Its major trip generators include office buildings along Valley Blvd., shopping centers along Lower Azusa Ave., Arroyo High School, Lambert Park and several elementary schools along the route before returning to the El Monte Trolley Station; this route is currently 7.7 miles.

#### **BLUE ROUTE**

The Blue Routes has been in operation since 1988. The Blue Route operates in a clockwise loop through the northeast portions of El Monte (See **Exhibit A**). Its major trip generators include the businesses and shopping centers along Peck Road, several elementary schools and Zamora Park before returning to the El Monte Trolley Station; this route is 8.0 miles.

## YELLOW ROUTE

The Yellow Route has been in operation since in 1988. It operates in a counter-clockwise loop through the southeast portions of El Monte (See **Exhibit A**). Its major trip generators include the government and office buildings along Valley Blvd., El Monte's Aquatic Center, El Monte's Community and Senior Centers, Five Points Shopping Center, El Monte High School, Mountain View High School, Mt. View Park, Arceo Park and several elementary schools along the route before returning to the El Monte Trolley Station; this route is 6.5 miles.

## GREEN ROUTE

The Green Route has been in operation since in 1988. It operates in a clockwise loop through the southwest portions of El Monte (See **Exhibit A**). Its major trip generators include government and office buildings along Valley Blvd. and Garvey Avenue, Five Points Shopping Center, Fletcher Park and several elementary schools along the route before returning to the El Monte Trolley Station; this route is 5.8 miles.

## ORANGE ROUTE

The Orange Route began operations in November 1990 to compensate for heavy use in that area of the City. It operates in a clockwise loop through the southeast portions of El Monte (See **Exhibit A**). Its major trip generators include the government and office buildings along Valley Blvd., Mountain View High School, El Monte High School, El Monte's Community and Senior Citizen Centers, Arceo Park and several elementary schools along the route before returning to the El Monte Trolley Station; this route is 6.7 miles.

### Maintenance & Fueling Facilities

Awarded Contractor for Sunday service will be required to lease and insure seven (7) buses from City, with vehicles to be stored and maintained by El Monte's Transportation Services Division located at 3990 Arden Drive, El Monte, CA 91731.

Awarded Contractor for Sunday service will fuel all vehicles at the end of each shift per RFP fueling requirements and return vehicles to El Monte's Transportation Services Division

Contractor to fuel all buses at the City of El Monte's CNG Refueling Station located at 3629 Cypress Avenue, El Monte CA 91731, or alternate fueling facility as designated by the City.

### **Section 3. Scope of Services**

Administration: The Contractor shall provide safe, efficient and economical bus service along

each of the routes shown in **Exhibit A**, according to the route map and schedule published and approved by the City and in effect for each such route on the first day of the Agreement Term. Additional or modified routes may be established pursuant to the procedures listed below.

As an integral part of providing Sunday fixed-route transit services, the Contractor shall at all times:

- Comply with all City service standards and all provisions outlined in this RFP
- Take all steps necessary to ensure the safety and reasonable comfort and convenience of the public utilizing these services
- Charge only such fares as may be directed by the City
- Comply with all policies, practices, procedures, terms, and conditions as may be directed by the City with regard to collection, security for, and disposition of fares, and any other service revenues
- Comply with all policies, practices, procedures, terms, and conditions as may be directed by the City with regard to matters such as passes, tickets, coupons, tokens, transfers, transfer systems, interconnections between different modes of transportation, and interconnections between different transportation agencies
- Comply with all of the policies, practices, procedures, terms, and conditions required by use of Federal, State, and other funds
- Comply with all policies, practices, procedures, terms, and conditions as may be directed by the City with regard to the availability and distribution of schedules and other printed material related to such service and related transportation services, including distribution of such schedules and materials on vehicles providing transit services under the Agreement
- Conduct such services, and its business and operations as they relate to such services, in a safe, sound, economical, efficient and customer-friendly manner
- Comply with all City efforts to improve efficiency
- Comply with all applicable provisions of Federal, State, and local laws and regulations including but not limited to, 49 Code of Federal Regulations (C.F.R.) Parts 27, 37, and 38; 49 C.F.R. Part 609; 28 C.F.R. Parts 35 and 36; and 41 C.F.R. Part 101-19; 49 U.S. C 5333 (b) Transit Employee Protection.

### Fixed-Route Operations

The Contractor shall provide all facilities, equipment, supplies, services, and personnel necessary to operate the El Monte Transit services unless specifically identified in this document.

### Operating Characteristics

#### Schedules

The fixed-route transit services operate on a printed schedule provided by the City. Schedules are printed with departure times at “time points” along the route. Schedules are attached as **Exhibit A**.

### Additional Stops

Additional transit stops along each route are made at MTA and Foothill bus stops and at nearside corner of controlled intersections.

### Service Holidays

Fixed-route services do not operate on the following holidays:

New Year's Day (first day of January)

Presidents' Day (February)

Easter Sunday

Memorial Day (last Monday in May)

Independence Day (fourth day of July)

Labor Day (first Monday in September)

Thanksgiving Day (fourth Thursday of November)

Christmas Day (twenty-fifth day of December)

\* Service will end at 5:15 P.M. on Christmas Eve and New Year's Eve

### Fixed-Route Driver Services

In addition to operating the vehicle and performing a pre-trip inspection of the vehicle prior to operation, Fixed-Route drivers are required to perform the following functions:

Safely operate wheelchair lift and secure wheelchair passengers

Accurately maintain detailed daily run/trips sheets

Change destination sign information as needed

Collect fares

Clearly call out bus stops (which are time points, at major cross streets, or EM

Transit/METRO/Foothill transfer points) upon approach

Submit "Unusual Occurrence Reports" to City after out-of-ordinary incidents arise during the service

Hand out and collect onboard passenger surveys

Hand out service notifications and promotional gifts

Fill schedule holders daily before pullout

Other data collection as necessary

Provide quality customer service

### Current Service Statistics

The City of El Monte seeks to improve on the Fixed-Route Transit service delivery. The following table shows the Fixed-Route Transit Operating Statistics for the last three years operating **Monday - Saturday service**. "Projections for Sunday Service" for FY 2014 referenced below for operating statistics are estimates based on Saturday totals from three years of data. Sunday service hours will mimic existing Saturday service.

	FY 10-11 \$38.96 hourly	FY 11-12 \$39.39 hourly	FY 12-13 \$39.39/42.47 hourly	FY 13-14 Projections For Sunday Service
Vehicle Service Miles (Revenue)	206,631.20	200,805.60	198,052.40	25,200
Vehicle Service Hours (Revenue)	19,097.70	19,261.05	19,013.58	2,400
Total Trips	29,070	29,290	28,910	3,640
Total Passengers	679,218	704,288	681,316	75,000
Operating Cost (farebox deducted & fuel paid by City)	\$520,715	\$517,893	\$550,151	-
Farebox Return	\$266,286	\$278,071	\$264,413	\$28,400
Passengers per VSH	35.57	36.57	35.83	31.25

Figure 1: Fixed-Route Operating Statistics

#### Adjustments/Variance in Vehicle Service Hours and/or Service

The City may elect, at its discretion, to modify or change the service criteria.

Modifications may include, but are not limited to:

- Adding or deleting service area or routes
- Increasing, decreasing, or changing operating hours
- Expanding or decreasing service hours.

If the VSH amount varies by more than 25%, the City and Contractor will renegotiate the VSH rate for that contract year. Only the marginal costs (driver wages and maintenance) will be renegotiated.

#### Charter Service

Contractor may, from time to time, be requested to provide special transportation service in addition to those described in this RFP. The Contractor shall provide this service under the same terms and conditions of the contract unless agreed to otherwise. The Contractor will not be allowed to use any vehicles for Charter Service.

#### Emergency Operations

The El Monte Transit vehicles may be called upon to provide emergency transportation during City emergencies. The Contractor shall provide the following:

- All vehicles will be fueled and ready for service each night
- Contractor will keep an updated list of all local drivers with home and cellular phone numbers to be called into service at any time of day or night within a 60-minute window
- Project Manager will provide a current list to the City of cellular and home phone numbers for key staff
- Deploy vehicles in a manner described by the City of El Monte

- The City will pay a minimum of two hours per driver called in for emergency service.

#### City-Owned Vehicles

The City of El Monte will furnish City-owned vehicles as specified in **Exhibit B**. Contractor shall use and operate all City equipment only in accordance with the terms and provisions of the RFP, Lease-Agreement, Refueling Agreement and all applicable Federal, State, and local laws and regulations and solely for the purpose of providing the transportation services and other specific services on behalf of the City.

Title to the vehicles and equipment are registered in the name of City, and at all times remain the sole property of the City of El Monte. Contractor shall not permit any of the vehicles to become subject to any lien, charge, or encumbrance. The City shall retain duplicate sets of keys for all vehicles (if applicable).

The Contractor shall require that due care is taken in operating and maintaining (if applicable) City vehicles to ensure that the effective vehicle life and road performance is maximized.

Awarded contract for Sunday service will require Contractor to maintain required insurances and to lease-City vehicles. Transit buses will be stored and secured at the City of El Monte Transportation Services Division at 3990 Arden Drive, El Monte, CA 91731. Contractor to submit to the City of El Monte "Vehicle Maintenance Request" forms, ensuring proper notification of repairs needed, and removal of vehicles "out of service" for safety issues and per RFP.

#### Vehicle Fueling

All vehicles provided for transit service must be fueled by Contractor at the City of El Monte CNG Refueling Station located at 3629 Cypress Avenue, El Monte, at the end of each shift unless otherwise directed by a City of El Monte representative. CNG fuel for El Monte's Sunday Fixed-Route Transit service will be paid by the City of El Monte.

#### Vehicle Maintenance (Fixed-Route)

Awarded contract for Sunday service will require Contractor to maintain required insurances and to lease City vehicles. Transit buses will be stored and secured at 3990 Arden Drive, El Monte, CA 91731. Contractor to submit to City of El Monte daily pre-trip inspection forms and "Vehicle Maintenance Request" forms, when applicable, ensuring proper notification of repairs needed and expeditious removal of vehicles from service for safety issues and per RFP. If vehicle is taken out of service for any reason by Contractor staff, Contractor to ensure that vehicle's "Out of Service" signage is placed on driver's seat at the end of shift and that vehicle keys are placed in the "Out of Service" box. Contractor is responsible to ensure that all vehicles providing service under this contract are in excellent mechanical condition by way of proper and timely

notification to the City. Contractor shall ensure that their employees, vehicles, facilities, and equipment meet all applicable laws, codes, and safety standards as set by Federal, State and local governments.

Contractor to provide road supervisor/manager/staff to deliver vehicle replacement(s) in the field, at the Trolley Station, while fueling, and/or deadheading to and from stations for all vehicles that become inoperable and/or taken out of service. If vehicle must be removed from service but is operable, Contractor's road supervisor/ manager/staff will drive vehicle back to City's Transportation yard and prepare and submit to City a detailed "Vehicle Maintenance Request" form for needed repairs prior to the end of shift. City to provide mechanic/manager/staff to ensure that vehicle is towed to shop or Transportation yard if vehicle were to become inoperable and unable to be driven back to Transportation yard by Contractor.

#### Pre-Trip Inspection (Fixed-Route)

Contractor will require each driver to inspect each vehicle with regard to safety, function and appearance of the vehicle prior to the start of service per Title 13, California Code of Regulations (regulated by the California Highway Patrol). A daily Pre-Trip Inspection form shall be completed prior to start of service and submitted to the City daily for all vehicles. **Safety issues require that the vehicle not be placed into service.**

#### Warranty Maintenance (Fixed-Route)

Neither the City nor the Contractor is the manufacturer of the City's equipment or the manufacturer's agent, and neither the City nor the Contractor makes any express or implied warranty of any nature regarding the City's equipment, including, but not limited to: its merchantability or fitness for any particular purpose; its design or condition; its workmanship; its freedom from latent defects; its compliance with the requirements of any law, rule, specification, or contract; or its non-infringement of any patent, trademark, or license.

Provided that the City or the manufacturer has supplied required warranty documents to the Contractor, the Contractor shall take all actions required to preserve any and all manufacturers' warranties regarding the City's equipment (if applicable).

#### Refueling (Fixed Route)

To ensure the safety of all, the City shall train the appropriate personnel of Contractor in proper Compressed Natural Gas refueling techniques for the Fixed-Route Transit Program. Contractor shall ensure that under no circumstance shall passengers be allowed onboard the vehicles during refueling. To be prepared for any after-hour emergencies, Contractor shall ensure that each vehicle has a full tank of fuel before the start of the next service day.

### Wheelchair Lifts (Fixed-Route)

The Contractor will ensure that wheelchair lifts are operational on all vehicles in the fleet. Liquidated Damages (see Section 4) may be assessed if wheelchair lifts fail while in service and are not immediately removed from service.

### Climate Control Systems (Fixed-Route)

Contractor shall ensure that the heating and air conditioning units are in proper working condition so that they are available at any time during the service hours and offer the most comfortable environment inside the vehicle regardless of the outside climatic conditions. Contractor shall require that drivers continually monitor climate control units during the day to ensure that they are operating properly. In-service vehicles without working heating or air conditioning will be exchanged within one round trip or sooner.

### Other Vehicle Systems (Fixed-Route)

The Contractor is responsible for ensuring the proper operation of all other systems onboard the vehicles. This includes:

- Radios
- Public Address Systems
- Destination Signs
- Fire Suppression Equipment
- Security Cameras and digital surveillance system.

Contractor is to immediately notify the City if any of these items do not operate properly, by way of a Vehicle Maintenance Form, and removing the vehicle from service.

### Vehicle Interior (Fixed-Route)

Contractor shall ensure that the interior passenger compartment is in good repair. It shall be free of exhaust fumes and deposits from the engine or engine compartment. Contractor shall also ensure that all corners and seams are securely fastened to the floor at all times and that the doors, stop notification devices, and public address system work properly. The driver's area shall be clean at all times. Each driver's personal items should be kept in a secure area and out of sight. The dashboard is to be free of papers, trash, and loose materials. The driver's seat shall be maintained in accordance with the standards stated below for passenger seats. The interior will be checked for damage and cleared of trash at the conclusion of each trip. The Contractor or any of its staff may not attach or place any markings on the interior of the vehicle.

Contractor shall ensure that the interior of the vehicles are clean and maintained while vehicle is in service:

- Sweep, clean and remove all trash and/or trip hazards, gum, sticky substances, foreign objects, dirt, etc., while vehicle is in service
- Clean driver's area, windshield and dashboard so it is free of dirt, stains, or grease while vehicle is in service

- Clean passenger seats to the extent that they are dirt free and free of all foreign substances, clean and dry, while vehicle is in service
- Ensure all ledges, stanchions, handrails, modesty panels, passenger signal strip are clean, and remove dirt, grease, gum or sticky substances while vehicle is in service
- Ensure that steps and/or entrance/exits of vehicle are free of trip hazards and safe for passengers while vehicle is in service.

Contractor shall ensure that the following interior maintenance is conducted each week by requesting maintenance by way of a "Vehicle Maintenance Form":

- Replace window (or Inserts) if ANY markings are present
- Replace or repair seat (or Inserts) if ANY markings are present
- Repair seats if there are ANY rips or tears
- Remove graffiti from ALL interior and exterior surfaces of the vehicle
- Replace window glass if scratched, broken, or cracked
- Repair or replace damaged schedule holders.

#### Exterior (Fixed Route)

Contractor shall ensure that all of the vehicle body components, appurtenances, and frame shall be sound and undamaged and retain original colors. The exterior body shall be free of cracks, dents, scrapes, graffiti and any other markings not approved by the City. **All damage detected during pre-trip inspections (along with vehicle malfunctions) should be noted on pre-trip inspection forms and noted on a "Vehicle Maintenance Request" form and submitted to the City of El Monte before the end of each shift. Safety issues require that vehicle not be placed into service.** Contractor may not attach or place any markings on the exterior of the vehicle without written permission from City.

#### City Inspections

City shall have the right to inspect any and all vehicles or cause same to be inspected at any time, with or without prior notice to Contractor.

#### Vehicle Out-of-Service Criteria

The Contractor shall not operate any vehicle that the City designates as unsafe for service. Vehicles must pass a City inspection after repairs are made and before the vehicle can go back into service. The following is the list of criteria used by the City's Mechanical Maintenance Administrator to determine if a vehicle is unsafe for service:

- Failing a CHP Inspection
- Any violation of Title 49 Code of Federal Regulations, North American Commercial Vehicle Critical Safety Inspection Items and Out Of Service Criteria
- Any fuel leak

- Any liquid leakage beyond a minor seepage
- Removal of any component, without replacement, that has not been approved by the City's designated mechanical maintenance agency
- Identification of any substandard repair or condition that could put the City of El Monte, their employees, or the public at risk of health hazard or injury.
- Overfilling of engine or transmission fluid

#### California Highway Patrol Inspections

The Contractor must make all vehicles available for inspection by the California Highway Patrol (CHP) as necessary. The City to follow CHP maintenance record guidelines and make all records available for inspection. Contractor to provide all required records and documents (pre-trip inspections forms, drivers' records, etc.)

#### Road Calls/Reroute Notification

In the event of a vehicle failure while in service, Contractor shall deploy a vehicle immediately upon notification to replace the failed vehicle. The failed vehicle shall display "Out of Service" on the front and side Destination Signs. Contractor shall notify the City within 15 minutes in the event that a vehicle fails while in service or while traveling to or from service. Failure to do so will result in liquidated damages (See Section 4). If vehicle becomes inoperable, Contractor to notify City to ensure vehicle is transported to mechanic shop or Transportation yard in an expeditious manner.

In the event that a reroute becomes necessary (due to road closure, construction, train, etc.), Contractor will notify the City with reroute proposal prior to reroute when possible.

#### Miles Between Road Calls

The Contractor must monitor miles between road calls for each vehicle used in revenue service. The City will use this information to calculate a monthly average road call interval for fixed-route transit service.

#### Return of City Vehicles

In the event the initial contract term or any extension thereafter is terminated, Contractor shall abide by these conditions:

All City-owned vehicles and related records shall be surrendered and delivered to the City immediately

The vehicles must be in appropriate mechanical condition as specified in Section 18. Contractor is responsible for returning vehicles in an acceptable appearance and mechanical condition.

If Contractor fails to abide by the conditions, any payments due will be held and, if necessary, amounts may be deducted to cover the cost of providing vehicles or making necessary repairs as per "Lease Agreement" (see Section 18).

## **Administration (Fixed-Route)**

### **Project Management**

Contractor shall provide the necessary management, field supervisors, and administrative personnel with expertise to customary industry standards. Contractor shall manage services in accordance with the guidelines and parameters established herein. The City reserves the right to approve the final staffing plan submitted by the Contractor.

### **Supervision**

The supervision for Sunday transit services shall be vested in the Contractor, and shall consist of, but not be limited to a Fixed-Route Operations Manager and Road Supervisor. Contractor shall assign individual(s) to this operation, and those individual(s) shall show, by decision and action, to be competent in all aspects of services.

### **Key Personnel**

The Fixed-Route Operations Manager and Road Supervisor are key personnel and will be individually approved in writing by the City before assuming these positions. These individuals are of critical importance to a successful service operation and are a significant component of the contractor selection process. As a result, Fixed-Route Operations Manager, also referred to as "Project Manager(s)," shall be assigned to this Agreement and may not be reassigned to any other operation internally or to an associated firm of contractor without prior written approval of the City. This paragraph shall not apply in the event said individuals either voluntarily or involuntarily terminate employment with contractor. Violation of this paragraph may result in liquidated damages (see Section 4) or other remedies up to and including termination of the Agreement.

The City may, at its sole discretion, accept or reject any individual proposed by the Contractor both during the contract startup and for any replacement during the life of this contract. The City may also, at its sole option, require the replacement of any key personnel.

### **Dispatchers**

Dispatchers shall be assigned to this Agreement, ensuring accurate program information is related to residents and customer service levels consistently meet Contractor and City expectations.

## Permits & Miscellaneous Licenses

The Contractor and their employees will hold, and provide copies of valid permits, licenses, certificates and other documents as are required by Federal, State, County, City and other governmental or regulatory bodies to legally engage in the services to be provided under this contract. Contractor will notify City of any suspension, termination, lapses, non-renewals or restriction of required licenses, certificates, or other documents which may be cause for termination of this Contract. Contractor is responsible for payment of all related permit and licensing fees. Contractor will obtain annual City Business License at Contractor's expense.

## Driver Requirements (Fixed-Route)

- Driver Standards

Contractor shall employ only such persons as are competent and qualified to provide all services in accordance with the requirements of this RFP and City policies, practices, procedures, and standards. All employees shall meet all applicable qualifications established by Federal, State and local laws and regulations. The City reserves the right to require reassignment of drivers or removal completely from service at its sole discretion. Any driver providing service under this Contract will at all times be:

- Legally licensed and qualified to operate the vehicles to which they are assigned. This includes the following requirements:
  - Have no reckless driving violations
  - Have no more than three (3) moving violations during the five (5) year period preceding City Business License renewal
  - Have no more than one (1) moving violation within the twelve (12) month period immediately preceding City Business License renewal
  - Have never been convicted of a drug or alcohol offense, verified by a California Department of Justice criminal background check or had his or her license suspended due to a drug or alcohol offense
  - Contractor will provide annual pull-notice printouts for each driver who operates vehicles under this contract. New drivers or drivers that transfer into the programs under this contract will present a DMV printout, no older than 7 days, prior to beginning to drive vehicles under this contract.
- Alert, careful, courteous and competent in their driving and customer relations habits
- Neat and clean in appearance and in uniform
- Will speak and understand English adequately as solely determined by the City
- Will post a driver nameplate in the vehicle so it is visible to passengers.

### Drug & Alcohol Testing

The Contractor must provide an ongoing program for drug and alcohol testing of drivers and other personnel in compliance with the State, Federal and US Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Parts 40, 653 and 654).

- Proof of compliance will be provided.

### Driver Uniforms

The Contractor must provide uniforms to all drivers. At minimum the uniform will include coordinating shirts and uniform pants that identify the Contractor's name and the employee's name. No denim, jeans, or short pants will be acceptable as uniform. If jackets or cold weather gear is worn it must also be uniformed and clearly identify the Contractor's name and the employee's name. If hats are worn they must be uniformed with contractor logo. These uniforms will be subject to City approval.

### Driver Training

Contractor shall provide all drivers with initial and ongoing training in, at minimum, the following topics (complying with all Federal, State and local requirements):

- Vehicle Operation
- Safe Vehicle Maneuvering
- Defensive Driving
- General Vehicle Handling and Safety Emergency First Aide
- Cardiopulmonary Resuscitation (CPR)
- Passenger Assistance Techniques (including operation of lift equipment)
- Passenger Relations / Customer Service
- ADA Requirements and Sensitivity Training

Detailed driver training records are to be kept by the contractor and these records must be accessible for review by City staff on request.

### City Policy Training

All drivers will be provided an orientation to City policies related to passenger assistance requirements, sensitivity issues, fares, and other policies. City staff will work with driver training staff to ensure that necessary topics are included in the orientation and may participate on a periodic basis in the orientation sessions and/or safety meetings to review such policies or present changes in policies that impact drivers.

### Employment Contracts, Labor Agreements, Labor Protection and Civil Rights

The Contractor may deal with and enter into written agreements with its employees. Contractor shall notify the City of any labor negotiations being conducted with its employees, shall keep the City fully informed of the status and progress of such negotiations, shall permit the City to observe such negotiations if the City so requests, shall confer and consult with the City about the negotiating positions taken by Contractor in such negotiations if the City so requests, and shall not enter into, or agree to modify or amend, any labor agreement without the City's prior written approval. The City shall not directly negotiate with collective bargaining agents recognized by the Contractor without the Contractor's consent; provided, however, that this provision shall not be construed to prohibit communications or negotiations relating to the City's obligations and rights under any applicable Federal or State laws/regulations.

Labor Protections: Transit Employee Protection, Title 49 U.S.C. 5333(b) requires that the interests of employees affected by assistance under most FTA programs shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. Employee protections under Section 5333(b) are required for the JARC program.

Civil Rights: The Contractor agrees to comply with all applicable Civil Rights Statutes and implementing regulations.

### Advertising / Promotion

The City will be responsible for advertising and promoting the transit programs and will provide the funds and materials necessary to carry out this responsibility. The Contractor will distribute promotional materials or assist in public relations activities from time to time and only at the request of the City.

### Fare Collection

- Fixed Route Fares

The current Transit fare is .50 cents per person per loop.

A maximum of two children, 4 years of age and under may ride free with paid adult.

### Fareboxes Collections

The fixed-route fleet has fareboxes. The Contractor will use a City-approved method for collecting fares, provided to City in writing for prior approval. The Contractor will collect and deposit all fare revenues daily.

### Cash Handling

Farebox revenue shall be retained by Contractor and deducted from the monthly invoice billed to the City. The City will review any and all procedures submitted relating to the collection, recording, depositing, and reporting of all cash receipts.

Contractor shall be responsible for providing security over collected funds, equipment in service, and all inventoried fare boxes and associated equipment. Contractor shall develop, place into service, and monitor procedure controls and security devices that will prevent theft or expose pilferage. Should there be any discrepancies between the actual revenue counts and the estimated revenue counts from the ridership data, and an investigation proves failure to adequately protect City's revenues by Contractor, then Contractor is responsible for monetary reimbursement to City.

### Radio System

Fixed-route drivers will be provided with Motorola XPR 6550 radios that are to be checked out and checked in each day. City to provide to Contractor one radio for their dispatch command center.

The cost for replacement of radios if damaged is the sole responsibility of Contractor.

### Payment

The City will pay the Contractor on a "Vehicle Service Hour" (VSH) basis, also referred to as "Revenue Hour," for fixed-route transit service. Vehicle Service Hours are calculated as the hours of operation of each vehicle during the scheduled operating hours (which includes scheduled layovers). Hours spent deadheading to and from the service area or from one route to another, training time, fueling time, lunch time and storing vehicles do not constitute service. Missed service will also be deducted.

The Contractor will submit a detailed invoice to the City by the tenth (10th) day of each month. The City will pay the Contractor within sixty (60) working days from the date of submission, provided that the invoice is complete and contains all necessary backup information, reports, and other required documents. The Contractor will deduct from the invoiced amount due all fares collected during the billing period of the invoice, providing documentation of such fare collection.

All revenues collected during any month shall be retained by contractor and (1) accounted for in the monthly report for the month during which it was collected; and (2) shown on the monthly invoice required by this section as a deduction from any amount due to contractor from City.

All Trolley Tokens are to be returned to City by the 10<sup>th</sup> of each month, providing documentation of such Tokens collection.

The City will deduct from the invoice any liquidated damage payments due, based upon City's determination of performance in relation to the liquidated damage clauses of the Agreement (See Section 4). City reserves the right to assess liquidated damages at any time.

City will verify all data provided by Contractor, and reimbursements/adjustments due to City or Contractor will be made at the end of each fiscal year (No later than August 30<sup>th</sup> of each year).

#### Data Collection & Reporting

- Fixed Route Operating Data

Contractor will submit all reports to City as requested. These reports will include those required by different funding agencies, as well as other reports the City may, from time to time, request related to operating performance.

The following reports must be submitted as shown:

Unusual Occurrence Report (Daily) - Daily report of any out-of-the-ordinary incidents arising in the service, to include, but not be limited to, disputes with or among passengers.

Down Vehicle Report (As Needed) - The Contractor shall send a down vehicle report (faxed or emailed) within one hour of a vehicle going down while in service.

Monthly Operating Summary (Monthly) - The Contractor will submit this report with the monthly invoice. It must include, at a minimum, the following information:

Total monthly ridership by Route, Bus Run, and Day

Total Vehicle Service Hours (VSH) by Route, Bus Run, and Day

Total Vehicle Service Miles (VSM) by Route, Bus Run, and Day

Passengers Per VSH by Route and Day

Passenger Per VSM by Route and Day

Fare categories by Route, Bus Run, and Day

Wheelchair Passengers

Token Passengers

Bike Passengers

Free Rides (children 4 and under – two free children with paying adult)

- Access Services Participants (Not PCAs)

- Employees riding free with City Rideshare ID

And other data required by the NTD and the City.

(Sample trip sheets and daily/monthly data spreadsheets are attached as **Exhibit C** for all data currently required).

Contractor to provide payroll records to City within 24 hours of City's request.

#### National Transit Database (Fixed Route)

The Contractor shall gather required National Transit Database (NTD) data information throughout the year and prepare and submit to City monthly data on NTD's MR20 form, along with preparing and submitting to City annual "Draft" NTD report for contracted services only. The City will combine contracted services data with in-house services for annual "Final" NTD report. (Sample NTD report and MR20 Form are attached as **Exhibit D**).

Monthly NTD data to be provided to City on the MR20 form by the 24<sup>th</sup> of each month, and the annual NTD report presented to City by July 10<sup>th</sup> of each year. NTD forms and reporting manual are available from the USDOT- Federal Transit Administration and MTA.

#### Records & Audits

- Recordkeeping/Audit Controls

The following recordkeeping and audit controls must be met:

- Contractor shall maintain financial records and reports relating to funds received during the contract.
- Contractor shall maintain books, records, documents, and other accounting procedures and practices which reflect all costs of any nature expended in the performance during the contract.
- These records shall be subject to audit or inspection by duly authorized City, County, State or Federal personnel.
- Contractor shall maintain all books, records, and other relative documents related to the contract for four (4) years after final payment.
- All financial records directly related to the work performed in this contract shall be made available to City upon request.

The Contractor must keep the minimum service records in addition to others required in this proposal:

- Contractor will provide access to or copies of daily driver trip sheets or any other operational records deemed necessary or requested by the City.
- Upon request, the Contractor will supply City with Contractor's personnel policies including reimbursement policies for sick pay, overtime pay and wage scale. A list of current personnel will be maintained and submitted as requested by City. Contractor's

personnel policies will be in conformance with State and Federal laws.

#### Transit Service Accidents & Incidents

- Accident Reporting

In the event of a traffic accident, immediate notification of Police is mandatory. Contractor will notify the City within 10 minutes and present all necessary reports to City within a twenty-four hour period of any accident and/or incident.

- Service Interruption Reporting

Contractor will log all incidents and service interruptions and provide monthly report for each. City to be immediately notified of any service interruptions.

#### Customer Service

- Customer Service Forms

Customer comments or complaints received by the Contractor or the City will be documented on the "City of El Monte Customer Service Form." The Contractor will return to the City written results of the Contractor's investigation of such requests and complaints within the timeframes specified below, unless otherwise instructed by the City:

Priority 1: Received by City within 24 hours from the date and time on the Customer Service Form

Priority 2: Received by City within 3 working days from the date and time on the Customer Service Form

### **SECTION 4. PENALTIES AND LIQUIDATED DAMAGES**

The Contractor will strive at all times to provide service in a manner which will ensure responsive service to transit customers, while at the same time maximizing service reliability and safety. In order to identify key areas of concern to the City, various performance standards are described below for which penalty or liquidated damage fines may be assessed when service falls below the standard.

The City of El Monte's failure to assess penalties and/or liquidated damages shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this RFP.

#### On-Time Performance/ Rerouting (Fixed Route)

The City has set an on-time performance level of 97 percent. On-time performance is defined as departing from a scheduled time point less than one minute early and arriving at a scheduled time point no more than 5 minutes late. The City will base the on-time performance on randomly sampled trips.

Penalty: One Hundred Dollars (\$100) per month for each full or partial percentage point below the 97% performance target.

Penalty: One hundred dollars (\$100) per incident will be assessed if Contractor fails to contact City prior to required reroute.

#### Missed Service (Fixed Route)

The City has set a minimum trip completion rate of 99%. This figure will be determined using figures reported by Contractor. A trip where service was not operated will be considered missed.

Penalty: One thousand dollars (\$1,000) per month for each full or partial percentage point below the 99% performance target.

Penalty: Two hundred and fifty dollar (\$250) per incident will be assessed if Contractor fails to contact City as RFP, "Road Call Notification," requires (Page 13).

#### CHP Vehicle Inspection (Fixed-Route)

To ensure a quality operation, the City will handle all California Highway Patrol terminal inspections, requiring Contractor's pre-trip inspection forms and Vehicle Maintenance Request forms (proper care to be taken to place Vehicle Maintenance Request form copy in each vehicle book).

Penalty: Two hundred and fifty dollar (\$250) per incident will be assessed if Contractor fails to provide required paperwork to ensure a successful CHP Terminal Inspection

#### Wheelchair Lifts (Fixed Route)

The Contractor must ensure proper operation of wheelchair lifts on all vehicles to operate in a safe manner. If a wheelchair malfunctions, the vehicle must immediately be removed from service and reported to City by way of a Vehicle Maintenance Request form. The City will determine compliance through Contractor reports, pullout inspections and random testing on route.

Penalty: Two-hundred-fifty dollars (\$250) per occurrence if any wheelchair lift is inoperable and not immediately removed from service.

#### Complaints (Fixed-Route)

The standard for City-verified service complaints, exclusive of customer questions, comments or suggestions, will be receiving fewer than 5 valid complaints within a calendar month. Multiple reports of the same occurrence will only count as one complaint. The City will determine compliance by tracking customer service forms. The City will make the ultimate determination if a complaint is valid.

Liquidated damage: One thousand dollars (\$1,000) per month if the number of verifiable service complaints, as determined by City, is more than five (5) per month.

Liquidated damage: Two-hundred-fifty dollars (\$250) per occurrence if Contractor's written responses to complaints are not received by the City in a timely manner as required by the RFP, "Customer Service," on page 21.

#### Key Personnel Retention

The Key Personnel, as outlined in Section 3, are crucial to the day-to-day operations which will be provided under this contract.

Penalty: Twenty-five thousand dollars (\$25,000) if any Key Personnel, as outlined in Section 3, are reassigned or promoted to another position by the Contractor without City consent during the Term of the Agreement.

#### Data Collecting and Reporting

Contractor will submit all reports to City as requested. These reports will include those required by different funding agencies, as well as other reports the City may, from time to time, request related to operating performance. The following reports must be accurate, complete and provided in a timely manner as referenced in RFP.

Liquidated damage: One thousand dollars (\$1,000) per month if Contractor's data collecting and reporting is consistently inaccurate, incomplete and/or not received by the City in a timely manner as required by the RFP, pages 18-21.

### **SECTION 5. INSURANCE**

The Contractor shall obtain and maintain at its sole expense for the entire term of the contract the following insurance in compliance acceptable to the City:

#### Liability Insurance

The Contractor shall assume all responsibility for damages to property or injuries to persons, including accidental death, which may arise from or be caused by the Contractor's performance of the contract, by its subcontractor, or by anyone it directly or indirectly employs, and whether or not such damage or injury shall accrue or be discovered before or after termination of the contract.

The Contractor shall obtain, pay for, and maintain during the life of the contract a commercial general liability policy, including contractual liability, and an automobile liability policy, which shall protect it and the City from claims for injuries and damages. The policy shall name the City of El Monte, its elected and appointed officers, agents, employees and volunteers as additional insured's under the policy in the following amounts:

Commercial General Liability Insurance in an amount not less than fifteen million dollars (\$15,000,000) per occurrence for personal injuries, including accidental death, to any one person; property damage insurance in an amount not less than fifteen million dollars (\$15,000,000) and subject to the above limits and combined single limit of insurance in an amount not less than fifteen million dollars (\$15,000,000); and

Automobile Liability Insurance shall be endorsed for all owned and non-owned vehicles with a combined single limit in an amount not less than five million dollars (\$5,000,000) per occurrence for personal injuries, including accidental death, to any one person and for property damage.

Both commercial general liability and automobile liability policies shall contain a "Severability of Interest" clause and a "Primary Coverage" clause for any loss arising from or caused by the Contractor's performance of the contract. In addition, the policies shall contain a statement of obligation on the carrier's part to notify the City, by registered mail, at least thirty (30) days in advance of any policy cancellation, termination, or reduction in the amount of coverage.

The Contractor shall furnish the required certificate(s) of insurance and endorsement(s) before the City executes a contract. Before starting operations under the contract the contractor shall furnish the City with a "certificate of insurance" and an "additional insured endorsement," both documents countersigned by the insurance carrier or its authorized representative, on forms satisfactory to the City Attorney, which set forth the above provisions.

The countersigned certificate, along with the additional insured endorsement, shall state: "The City of El Monte, its elected and appointed officers, agents, employees and volunteers." This insurance is primary to the coverage of the City of El Monte. Neither the City nor any of its insurers shall be required to contribute to any clause. Additionally, the certificate of insurance and the additional insured endorsements shall state: "The issuing company shall mail thirty (30) days, advance notice to the City of any policy cancellation, termination, or reduction in the amount of coverage."

The Contractor's failures to obtain, pay for, or maintain any required insurance shall constitute a material breach upon which the City may immediately terminate or suspend the contract. At its discretion, the City may obtain or renew the insurance and pay all or part of the premiums. Upon demand, the Contractor shall repay the City all monies the City has paid to obtain or renew insurance, or the City may offset the cost of the premium against any monies due the Contractor from the City.

#### Worker's Compensation Insurance

The Contractor understands and agrees that all persons furnishing services to the City under the contract are, for the purpose of workers' compensation liability, employees solely of the Contractor and not the City. The Contractor shall bear the sole responsibility, liability, and costs of furnishing workers' compensation benefits to its

employees, or anyone it directly or indirectly employs, for injuries arising from or connected with services performed on behalf of the Contractor.

The Contractor shall furnish the required certificate of insurance before the City executes the Agreement. In addition, the policy shall contain a statement of obligation on the carrier's part to notify the City, by registered mail, at least thirty (30) days in advance of any policy cancellation, termination, or reduction in the amount of coverage.

## **SECTION 6. INDEMNITY**

Contractor shall indemnify, defend, and hold harmless, to the maximum extent permitted by law the City of El Monte, its elected and appointed officers, agents, employees and volunteers from and against any and all liability, suits, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death, or property damage, and regardless of whether the allegations are false, fraudulent, or groundless), costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses) which in whole or in part arise out of or are connected with, or which are alleged to have arisen out of or to have been connected with, Contractor's performance of this contract (including performance by its agents, employees, subcontractors, or by anyone the Contractor directly or indirectly employed).

Contractor's obligation to indemnify, defend, and hold harmless shall remain in effect and shall be binding upon Contractor whether such injury or damage shall accrue, or may be discovered, before and after the termination of this contract. Contractor's failure to comply with this section's provisions shall constitute a material breach upon which the City may immediately terminate or suspend this contract.

### **Contractor's Damages**

Except as expressly provided in this RFP, the City shall not be responsible to the Contractor or to any of its officers, employees, agents, or attorneys for any loss of business or other damage caused by an interruption of Transit Services, or for the time lost in repairing or replacing any City Equipment, or for any loss, injury, or damage arising out of or relating to the City's failure to deliver City Equipment, or for any other losses or damages sustained by the Contractor hereunder. Except as expressly provided in this RFP, the City assumes no liability or responsibility for any acts or omissions of Contractor, or of Contractor's officers, employees, agents or attorneys, or for any property of the Contractor or any other person that is damaged, lost, or stolen in the performance, or as a result of the performance, of the Agreement.

## **SECTION 7. CONTRACT TERM**

This contract will remain in effect for thirty-six (36) months from the effective date of the Agreement with options for up to two (2) additional thirty-six (36) month renewals. The exercise of such options shall be at the City's sole discretion. Should City choose to

exercise one or both options, City shall notify contractor at least six (6) months prior to the expiration of the current term.

## **SECTION 8. TERMINATION OF AGREEMENT**

The Agreement may be terminated in whole or in part upon thirty (30) days written notice given by the City to the Contractor in the event that any funding source fails in any fiscal year to appropriate or otherwise make available sufficient funds, as determined in the sole discretion of the City to cover payments to be made to contractor or if equipment necessary to perform the services hereunder is unavailable for any reason as determined by the sole discretion of the City. The City may also terminate the Agreement upon 24 hours written notice in the event of Contractor default including but not limited to the cancellation, elimination or reduction of any route or reduction in service or scheduling or any other violation or failure which cannot be cured to the sole satisfaction of City.

Upon termination, the City's obligations shall be limited to payment of services rendered by the Contractor up to the date of said termination, provided however, that the City may agree to make certain additional payments to the Contractor that may be required herein. Immediately following termination of the Agreement, the Contractor shall surrender and deliver to the City at such time or times and at such locations as the City may designate all City vehicles and equipment, records pertaining to all City vehicles and equipment, payroll records and any other records that are deemed by the City to be necessary to the continuation of services.

## **SECTION 9. COMPLIANCE WITH LEGAL AND REGULATORY REQUIREMENTS AND GRANT CONDITIONS**

In performance of the services described herein, contractor shall be responsible to comply with all applicable Federal, State and local requirements including but not limited to, Equal Employment Opportunity, Disadvantaged Business Enterprise, Labor Protection, the Americans with Disabilities Act, Federal Transit Administration, Drug and Alcohol Testing requirements and other laws and regulations applicable to contracts utilizing federal funds and other local grants received by the City or by Contractor at any time with respect to the services, equipment, real property and facilities provided for hereunder.

### **No Obligation by the Federal Government:**

49 U.S.C.Part 18, FTA Circular 4220.1E

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party

(whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts:

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records:

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO

Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract:

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<b>I <u>State Grantees</u></b>  a. Contracts below SAT (\$100,000)  b. Contracts above \$100,000/Capital Projects	None  None unless <sup>1</sup> non-competitive award	Those imposed on state pass thru to Contractor	None  Yes, if non-competitive award or if funded thru <sup>2</sup> 5307/5309/5311	None  None unless non-competitive award	None  None unless non-competitive award	None  None unless non-competitive award
<b>II <u>Non State Grantees</u></b>  a. Contracts below SAT (\$100,000)  b. Contracts above \$100,000/Capital Projects	Yes <sup>3</sup>  Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Contractor	Yes  Yes	Yes  Yes	Yes  Yes	Yes  Yes

Sources of Authority: 1 49 USC 5325 (a), 49 USC 5325 (a), 2 49 CFR 633.17, 49 CFR 633.17, 3 18 CFR 18.36 (i), 18 CFR 18.36 (i)

### Federal Changes

#### 49 CFR Part 18

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000  
42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332  
29 CFR Part 1630, 41 CFR Parts 60 et seq.

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Executive Order 13166 (2000) expanded Title VI to include persons with Limited English Proficiency (LEP).

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations

to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### Disadvantaged Business Enterprise (DBE)

##### 49 CFR Part 26

##### Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The City of El Monte elects not to place a DBE contract goal on this project as there are little or no opportunities for DBE subcontractors for fixed-route transit services. A separate contract goal has not been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of El Monte deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. A copy of all DBE Certifications are required, if applicable.

c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the City of El Monte.

d. The contractor must promptly notify the City of El Monte whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City of El Monte

### Incorporation of Federal Transit Administration (“FTA”) Terms:

#### FTA Circular 4220.1E

FTA has developed the following incorporation of terms language- The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of El Monte requests which would cause City of El Monte to be in violation of the FTA terms and conditions.

### Prompt Payment:

#### 49 CFR §26.29

The City will pay the Contractor on a “Vehicle Service Hour” (VSH) basis, also referred to as “Revenue Hour,” for fixed-route transit services. Vehicle Service Hours are calculated as the hours of operation of each vehicle during the scheduled operating hours (which includes scheduled layovers). Hours spent deadheading to and from the service area or from one route to another, training time, fueling time, lunch time and storing vehicles do not constitute service. Missed service will also be deducted.

The Contractor will submit a detailed invoice to the City by the tenth (10th) day of each month. The City will pay the Contractor within sixty (60) working days from the date of submission, provided that the invoice is complete and contains all necessary backup information, reports, and other required documents. The Contractor will deduct from the invoiced amount due all fares collected during the billing period of the invoice, providing documentation of such fare collection.

All revenues collected during any month shall be retained by contractor and (1) accounted for in the monthly report for the month during which it was collected; and (2) shown on the monthly invoice required by this section as a deduction from any amount due to contractor from City.

Contractor to submit invoice to City with vehicle lease deduction no later than 10 days from end of each month. Failure to submit invoice within 30 days will result in a 10% penalty assessment.

### Termination for Convenience:

a. The City of El Monte may terminate this contract, in whole or in part, at any time by ten (10) days written notice to the Contractor. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City of El Monte to be paid the Contractor. If the Contractor has any property in its possession

belonging to the City of El Monte, the Contractor will account for the same, and dispose and/or return it in the manner the City of El Monte directs.

b. Termination for Default [Breach or Cause]: If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City of El Monte may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City of El Monte may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the City of El Monte that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City of El Monte after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure: The City of El Monte in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 24 hours in most cases in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the City of El Monte's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from the City of El Monte setting forth the nature of said breach or default, the City of El Monte shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City of El Monte from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach: In the event that the City of El Monte elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the City of El Monte shall not limit the City of El Monte's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts)

The City of El Monte by written notice, may terminate this contract, in whole or in part, when it is in the City's interest. If this contract is terminated, the City shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of El Monte may terminate this contract for default. The City of El Monte shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

g. Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of El Monte may terminate this contract for default. The City of El Monte shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of City goods, the Contractor shall, upon direction of the City of El Monte protect and preserve the goods until surrendered to the City or its agent. The Contractor and the City of El Monte shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of El Monte.

Suspension and Debarment

This agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirements to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its proposal, which is attached hereto and made a part of this agreement, the contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City of El Monte. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of El Monte, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 20, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### Breaches and Resolutions

#### 49 CFR Part 18, FTA Circular 4220.1E

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City of El Monte. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City of El Monte City Manager or his or her designee. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City of El Monte City Manager or his or her designee shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the City of El Monte, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of El Monte and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of El Monte is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of El Monte or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Lobbying:

31 U.S.C. 1352, 49 CFR Part 19, 49 CFR Part 20

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

*(To be submitted with each bid or offer exceeding \$100,000)*

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, *apply* to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

Clean Air:

42 U.S.C. 7401 et seq , 40 CFR 15.61, 49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Clean Water Requirements:

33 U.S.C. 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Contract Work Hours and Safety Standards Act:

29 CFR 5.5(b)

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any “contract in an amount that is not greater than \$100,000.” 40 USC 3701(b)(3)(A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-

construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The City of El Monte shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

### Transit Employee Protective Provisions:

(1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities

- If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that the U.S. DOL letter **(Exhibit F)**.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas

- If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

Labor Protections:

Transit Employee Protection, Title 49 U.S.C. 5333(b) requires that the interests of employees affected by assistance under most FTA programs shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. Employee protections under Section 5333(b) are required for the JARC program.

Charter Service Operations:

The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

School Bus Operations:

Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

ADA Access:

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Energy Conservation:

42 U.S.C. 6321 et seq., 49 CFR Part 18

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### Drug and Alcohol Testing:

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California or the City of El Monte to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before March 15 and to submit the Management Information System (MIS) reports before March 15 to the City of El Monte City Manager or his or her designee. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

### **SECTION 10 RACE-CONSCIOUS DISADVANTAGE BUSINESS ENTERPRISES**

A project-specific goal has not been established for this RFP. There are little or no subcontractor opportunities for DBE firms. We highly encourage the utilization of DBE firms on this procurement. All Proposers including DBEs in their proposals shall complete and submit Form A, "Bidder DBE Commitment," and Form B, "Bidders List," at the time of proposal submittal. Please reference Form C entitled "RFP R-C DBE Instructions for the City of El Monte."

- 1 The CITY OF EL MONTE, as a recipient of federal financial assistance, is required to implement the Los Angeles County Metropolitan Transportation Authority's (Metro's) Disadvantaged Business Program in accordance with federal regulation 49 CFR Part 26 issued by the U.S. Department of Transportation (DOT). If applicable, CONTRACTOR shall furnish all documentation satisfactory to City of El Monte that the work committed to RC-DBE's was actually performed by RC-DBE's. Requests for progress payments shall include a summary of payments actually made to RC-DBE's during the invoice period (Form D), which includes a total of all payments made to all subcontractors under this Contract. RC-DBE participation shall be credited toward the overall RC-DBE goal only when payments are actually made to the RC-DBE firms. CONTRACTOR shall submit on the 15<sup>th</sup> of every month to CITY OF EL MONTE Contract Compliance Officer, Form D. Upon completion of the Contract, CONTRACTOR shall submit "Final Report-Utilization of Disadvantaged Business Enterprises-First Tier Subcontractors", Form E, and submit with the final invoice.

- 2 CONTRACTOR shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by CONTRACTOR to carry out these requirements is material breach of this Contract, which may result in the termination of this Contract or such other remedy, as CITY OF EL MONTE may deem appropriate.

## **SECTION 11. PROPOSALS**

In addition to addressing the Scope of Services section of this RFP, all proposals must also include the information outlined in the following sections. Proposals must be kept to 75 pages.

### **Background and Experience of the Contractor**

Discuss the overall capabilities of the company. Include a brief description of the company's history and recent relevant experience as it applies to the Scope of Services.

### **Proposed Personnel and Management Plan**

The Contractor shall include an organizational chart showing the names of all proposed management staff. This shall include a "Project Manager" who may be the City's central contact person on day-to-day operations of the fixed-route transit services. A resume for the General Manager, Project Manager, Road Supervisor, and Maintenance Manager (If applicable) should be included in the proposal. The resume should include the following:

Name of staff member

Experience

Training

Total effort of staff members' time allotted to the contract expressed in percentages.

Number of hours weekly

Unless this employee leaves the company, severe liquidated damages may be incurred if the Project Manager or Fixed-Route Manager(s) position(s) is changed without prior written approval from the City (see Section 4).

- Employee Training

Provide a description of all employee training programs including driver, maintenance (if applicable), management, dispatch, road supervisor, and safety training. One complete copy of the driver training program and safety program must be included with the proposal.

- Employee Wages & Benefits

Please provide the salary range and benefits for the following positions:

Fixed-Route Driver  
Operations Supervisor  
Dispatcher  
Dispatch Supervisor  
Road Supervisor  
Clerk  
Mechanic (if applicable)  
Service Worker

Also describe any other programs your company offers which may deter employee turnover. Include any Employee Incentive Programs that will be offered.

- Staffing Levels

Provide a comprehensive list of all positions (as Full-Time Equivalent figures) and a brief description of the job assignments. Include every position to be provided within your proposal.

#### Maintenance Program/Strategy

In this section Contractors should discuss their maintenance program/strategy for maintenance needs as it relates to vehicle maintenance of interior of vehicle while in possession and control of Contractor as referenced on pages 11-12 or RFP:

#### Facility/Fueling Description

Awarded contract for Sunday service will require contractor to maintain required insurances and to lease City vehicles. Transit buses will be stored and secured at the City of El Monte Transportation Services Division offices located at 3990 Arden Drive, El Monte, CA 91731. Contractor will fuel all vehicles at the end of the day at the City's CNG Refueling Station located at 3629 Cypress Avenue, El Monte, California, unless directed otherwise by a City representative.

#### Implementation Plan

The Contractor shall submit an implementation and operational plan and schedule. These step-by-step plans shall include, at minimum, the following: staffing, personnel training, maintenance and storage (as applicable), fueling, cleaning when required, uniforms, fare box collection, licensing and permits, insurance, road calls, accidents/incidents, documentation and reporting. Also include any and all procedures relating to the collection, recording, depositing, and reporting of all cash receipts.

The implementation schedule shall include all the key dates and tasks that Contractor needs to complete prior to the startup date of July 6, 2014.

### Cost Proposal Form

All Contractors must complete Cost Proposal Form, Attachment 1. A copy of this form is available in computer format upon request. The monthly cost for each year of the contract should be used to create an annual cost for service, plus the \$10 per revenue hour for City's lease charge to maintain vehicles.

### List of References

List five (5) current or former clients for whom similar or comparable services have been performed. Include the name, mailing address, and telephone number of the principal contact person for the contract. Also include the dates of service, description and location of the facilities serviced, and a description of the services provided. Also provide a list of all transit services provided within the states of California, Arizona, Nevada, Oregon, and Washington for the last five (5) years (including expired contracts). Please provide the name of the service operated, type of service, contracting agency name and years operated.

### Financial Responsibility

The Contractor shall provide an audited financial statement to demonstrate the financial status of the Contractor in order to provide the required services through the term of the contract and finance the costs of services being proposed. This financial statement shall be, at a minimum, a compiled balance sheet and income statement signed by a certified public accountant. Financial statements are not public records and shall not be open to public inspection during and after the bidding process. Contractors must also provide three credit references, including the Contractor's primary bank.

### PERFORMANCE BOND

The Contractor shall deliver to the City at the time of or prior to the execution of the Agreement a Performance Bond approved by the City Attorney's office and in the amount of \$150,000 by a surety company authorized to do business in the State of California. Said bond shall be conditioned upon the full and faithful performance by the Contractor of each covenant, promise, term, condition, undertaking, and agreement set forth in the Agreement and this RFP.

## **SECTION 12. PRE-PROPOSAL CONFERENCE & QUESTIONS**

### Pre-Proposal Conference

A pre-proposal conference is scheduled for April 2, 2014, to enable prospective firms to clarify additional details considered pertinent for their evaluation prior to the proposal submittal date. The meeting will be conducted on Wednesday, April 2, 2014, at 10:00 am. at the City of El Monte's Transportation Services Division, 3990 Arden Drive, El Monte 91731.

### Vehicle Inspection Meeting

A vehicle inspection meeting will be held at the City of El Monte's Transportation Offices at 3990 Arden Drive, El Monte, 91731, on Thursday, April 3, 2014, between 3:00 p.m. - 4:00 p.m. This meeting will allow prospective firms time to make a cursory inspection of City-owned vehicles of same make and models to be leased.

### Questions, Changes, and Clarifications

If any person contemplating submitting a proposal of the items or services listed herein is in doubt to the true meaning of any part of this Request for Proposals, they may submit to the City, at the address or email address provided in Section 15, a written request for an interpretation or correction thereof.

If the request is received within 72 hours of the pre-proposal conference, these questions may be addressed in that forum. Proceedings of the pre-proposal conference will be distributed to all known interested parties, as well as any changes, clarifications, or any addenda to the RFP.

### **SECTION 13. CLOSING DATE**

Proposals must be received by the City of El Monte City Clerk's Office, 11333 Valley Blvd., El Monte, CA 91731, no later than 5:00 p.m., Monday, April 21, 2014. Late proposals will not be accepted and will be returned unopened. Proposals must be submitted as outlined.

### **SECTION 14. GENERAL ADMINISTRATIVE INFORMATION**

The Proposer shall represent and warrant that it is sufficiently informed as to all matters affecting the performance of the work, and the furnishing of labor, supplies, material or equipment called for in this proposal; that the proposal has been checked for errors and omissions, that the facts stated in the proposal are current and as intended and are a complete and correct statement of the facts stated therein for performing the work or furnishing the labor, supplies, materials or equipment required by the RFP. The Proposer waives any claim for the return of its proposal on account of errors or omissions claimed to have been made in its proposal or for any other reason. Each Contractor understands and agrees that the City of El Monte, its elected and appointed officers, agents, employees and volunteers shall not be liable for:

- Any costs incurred by a Contractor in the preparation, delivery or presentation of a proposal.
- Any costs incurred by a Contractor in meeting the criteria as a result of making or submitting a proposal or subsequently in entering into a formal contract with the City of El Monte; and

- Any errors, inaccuracies or misstatements related to the information or data supplied to any Contractor by the City. The use of such information or data provided by the City, its officers, employees, or agents is intended to be used at the sole discretion and risk of the Contractor in the preparation of a proposal pursuant to this RFP.
- It is the Contractor's responsibility to carefully examine the requirements, specifications, and conditions expressed in the RFP and fully inform themselves as to the quality and character of services required.
- Any changes made in the RFP will be made only by written addendum, duly issued by the City of El Monte to each firm whom the RFP was issued.
- All responses to this RFP will become the property of the City of El Monte and will be retained or disposed of accordingly.
- The City of El Monte is an Equal Opportunity Employer.
- The City of El Monte reserves the right to modify or cancel this RFP, either in part or in its entirety, and to waive any informality in a proposal when to do so would be in the best interest of City, and to negotiate directly with any of the firms making a proposal. Nothing in this RFP or the proposal process shall be construed in any manner as obligating the City to accept any proposal.

Unauthorized conditions, limitations, provisions attached to this RFP, or an incomplete package will render it non-responsive and may be cause for its rejection. No telegraph or telephone proposals or modifications will be considered. The successful Proposer shall abide by and obey all applicable Federal, State, and City laws, including, but not limited to, the non-discrimination provisions of the laws of the United States of America, the State of California, and City of El Monte.

The Proposer to whom the Agreement is awarded shall be required to enter into a written Agreement with the City of El Monte in a form approved by the City Attorney. The RFP, or any part thereof, and the Proposer's responses, may be incorporated into and made a part of the final Agreement; however, City reserves the right to further negotiate the terms and conditions of the Agreement with the selected Proposer.

All proposals shall be firm offers and may not be withdrawn for a period of ninety (90) days following the deadline date for submission of proposals noted herein.

All proposals submitted in response to this RFP will become the property of City of El Monte. The Proposer must identify, in writing, all copyrighted material, trade secrets or other proprietary information that it claims is exempt from disclosure under the Public Records Act, California Government Code Section 6250, et seq. Any Proposer claiming such an exemption must also state in its proposal that the Proposer agrees to defend any action brought against City for its refusal to disclose such material, trade secrets or

other proprietary information to any party making a request therefore. Any Proposer who fails to include such a statement shall be deemed to have waived its right to an exemption from disclosure as provided by said Act.

The Agreement shall be by and between City and Proposer and shall not be intended, and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between City and Proposer. Neither the Agreement nor any interest herein nor claim hereunder may be assigned by Proposer, neither voluntarily nor by operation of law, nor may all or substantially all of the Agreement be further subcontracted by Proposer without the prior written consent of City. Penalty or possible termination may result for failing to procure written approval from City. No such consent shall be deemed to relieve Proposer of its obligations to comply fully with the requirements hereof.

In the event of a dispute based upon the Proposer's submission of a proposal and the City's acceptance of same, the Proposer will be required to indemnify, defend and hold harmless at its expense, including the provision of legal counsel, the City, its agents, employees and officers from liability, claims, demands, damages and costs if such dispute or action arises solely upon the award of the proposal in compliance with State, Federal and local laws.

## **SECTION 15. SUBMITTALS**

### **Submittal Format**

Please submit one original and five (5) copies of the proposal. Proposals are not to exceed 75 pages in length (double-sided page to count as two pages). The audited financial statement, driver training manual, and safety manual will not be counted towards the 75 page limit. Please use recycled paper when possible and print on both sides. All proposals must be sealed in a package showing the following information on the outside:

Addressed to: CITY CLERK  
CITY OF EL MONTE  
11333 VALLEY BLVD  
EL MONTE, CA 91731

- Firm's name, address, fax, phone number, and email address
- "City of El Monte, Transit Operations Sunday Service" Proposal
- Proposal due date

The proposal package must be mailed or delivered to the above address prior to the closing date and time for receipt of proposals. Firms mailing or shipping their proposals must allow sufficient delivery time to ensure timely receipt of their proposals by the time specified. Late proposals will not be accepted.

The City reserves the right to reject all proposals for any reasons whether or not said proposals are responsive or non-responsive. The City reserves the right to reject any proposal which is non-responsive to this RFP. The City may, but shall not be required to, solicit additional information, orally or in writing, from one or more of the applicants relating to the content of their proposal(s). The City may, but shall not be required to, meet with one or more of the applicants prior to a preliminary selection of one or more applicants with which City may choose to negotiate.

If any person contemplating submitting a proposal of the items or services listed herein is in doubt to the true meaning of any part of this Request for Proposals, they may submit questions directly to the City of El Monte City Clerk's office at the address above or email Gwynn Stevens, Transportation Operations Manager, at [gstevens@elmonteca.gov](mailto:gstevens@elmonteca.gov). All questions and answers provided will be outlined in an addendum and distributed to those in receipt of an RFP

## **SECTION 16. SELECTION PROCESS**

### **Selection Schedule**

RFP Release Date	March 17, 2014
Pre-Proposal Conference	April 2, 2014
Vehicle Inspection Meeting	April 3, 2014
Proposals Due	April 21, 2014
Interviews with Contractors	May 21 and 22, 2014
Webpage Posting of Recommended Contract Award	June 4, 2014
Award Recommendation to Council	June 24, 2014
Anticipated Contract Service Start Date	July 6, 2014

### **Selection Criteria**

A City-formed Selection Committee will review and evaluate all proposals submitted in accordance with this RFP. This committee will use the following selection criteria to evaluate the proposals:

Cost Proposal	30%
Qualifications and Experience of Contractors/Subcontractors	25%
Responsiveness and Comprehensiveness of Proposal to RFP	20%
Qualification of Management Staff	15%

Interview Evaluation	5%
Information Obtained from References	5%
Total	100%

### Interview Process

The City will conduct interviews with all Contractors submitting complete and responsive proposals. These interviews will be approximately one hour in length. The City will have a panel comprised of City staff and/or experts from other entities in the fixed-route transit field. All Key Personnel, as defined in Section 3, must attend the Contractor interview.

## **SECTION 17 PROPOSAL PROTEST PROCEDURE**

A proposer may protest a proposal award if he/she believes that the award was inconsistent with City policy or the proposal's specifications or was not in compliance with State or Federal law or guidelines.

A protest must be filed in writing with the City Manager or his/her designee within **five (5) business days** after webpage posting of recommended Contract award. Webpage posting to occur on Wednesday, June 4, 2014. The proposer shall submit all documents supporting or justifying the protest. A proposer's failure to file a timely protest shall constitute waiver of his/her rights to protest the award of the contract.

Any proposer submitting a proposal may file a protest of the City's intent to award the Contract provided that each and all of the following conditions are met:

The protest must be submitted in writing to the City (e-mail is not acceptable), before 4:00 p.m. of the fifth business day following the webpage posting of recommended Contract award.

The initial protest document must contain a complete statement of any and all bases for the protest including, without limitation, all facts, supporting documentation, legal authorities and argument(s) in support of the grounds for the protest; any matters not set forth in the written protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence.

The protest must refer to the specific portions of all documents which form the basis of the protest.

The protest must include the name, address and telephone number of the person representing the protesting party.

Any protest not conforming to the foregoing shall be rejected by the City as invalid. Provided that a protest is filed in strict conformity with the foregoing, the City's City Manager, or such individual(s) as may be designated by him/her, shall provide the proposer submitting the protest with a written statement concurring with or denying the protest. The City's Governing Board will render a final determination and disposition of a protest by taking action to adopt, modify or reject the disposition of a proposal as reflected in the written statement of the City's City Manager or his/her designee. Action by the City's Governing Board relative to a proposal award shall be final and not subject to appeal or reconsideration by the City, any employee or officer of the City or the City's Governing Board. The rendition of a written statement by the City's City Manager, or his/her designee, and action by the City's Governing Board to adopt, modify or reject the disposition of the proposal award reflected in such written statement shall be express conditions precedent to the institution of any legal or equitable proceedings relative to the proposal process, the City's intent to award the Contract, the City's disposition of any protest or the City's decision to reject all proposals.

The procedure and time limits set forth in this paragraph are mandatory and are the proposer's sole and exclusive remedy in the event of protest. Failure to comply with these procedures shall constitute waiver of any right to further pursue the protest, including filing a California Government Code Claim or legal proceeding.

## **SECTION 18. LEASE AGREEMENT TERMS**

**BASIC LEASE TERMS.** Contractor to lease five (5), 32' CNG cutaway buses and two 32' CNG transit buses to operate Sunday Fixed-Route transit service which will be stored at the City's Transportation Services Division, 3990 Arden Drive, El Monte, CA, and maintained by the City of El Monte. Under no circumstances, may any Operator use the aforementioned buses for any purpose other than the purpose set forth in the Operating Agreement. The buses may not be used or operated in any other jurisdiction other than the City of El Monte and may not be used in the service of any other persons or entities other than those persons contemplated under the Operating Agreement. The vehicle identification numbers of the buses are attached and incorporated hereto as **EXHIBIT "B."** The Parties acknowledge, understand and agree that the Operating Agreement is inclusive of the City's related request for proposals and Operator's corresponding response to the request for proposal. FTA grant funds are available for the purchase of an eighth bus for which the City anticipates procuring for the Fixed-Route Transit Program within 18 months of contract startup.

**TERM OF AGREEMENT.** This Agreement shall commence from the Effective Date and shall terminate automatically upon the date the Operating Agreement or any extension thereto expires or terminates. Operator shall deliver possession of the City vehicles to the City promptly upon the termination of this Agreement but in no event later than five (5) days following the effective date of the termination. Notwithstanding, any other term or conditions set forth in this Agreement, the Operating Agreement or any extension, amendment or modification thereto, City, in its sole and absolute discretion, may terminate this Agreement prematurely without cause, upon thirty (30) days prior written notice to Operator.

**COMPENSATION.** In consideration for buses leased from the City of El Monte to operate Sunday fixed-route transit service, vehicles to be stored and maintained by the City at a charge of \$10.00 per revenue hour to be deducted from Contractor's monthly invoice.

**MAINTENANCE, REPAIRS AND OPERATING EXPENSES.** Consistent with any and all maintenance requirements set forth in the Operating Agreement or any extension, amendment or modification thereto (including the request for proposals), Contractor to also pay City \$10.00 per revenue hour for the storing and maintenance of all vehicles. Operator shall comply with all maintenance requirements set forth in the Operating Agreement (where applicable) and upon the termination of this Agreement shall return the buses to City in good condition with no excessive or unacceptable wear and use.

**WEAR AND USE STANDARDS.** Excessive or unacceptable wear and use includes, but is not limited to (a) glass breakage or discoloration; (b) damage or deterioration of body, fenders, metal work, trim, or paint; (c) torn dash, floor covers, seats, upholstery or interior work (d) any wheels or tires that are missing or not in safe condition; or (e) any damage that makes the vehicle either unsafe or unlawful to operate.

Contractor will be responsible for all charges for damage sustained to vehicles while in their control and possession that are not due to normal wear and use. Charges will be deducted from monthly invoices, with copy of all invoices and reports provided to Contractor.

**VEHICLE INSURANCE.** Operator shall comply with all insurance requirements set forth in the Operating Agreement or any extension thereto, including any insurance required under the request for proposals.

**USE.** Only Operator and Operator's employees are authorized to operate the buses. Operator covenants and agrees (a) that it shall keep the buses free of all fines, liens and encumbrances; and (b) to pay any such fines or remove any such liens and encumbrances immediately. If Operator fails to comply with the terms of this Section, City may pay to remove or settle any such fines, liens or encumbrances and any amounts so paid by City shall be offset against any compensation otherwise owed to Operator under the Operating Agreement or any extension, amendment or modification thereto. Operator covenants and agrees that Operator will not use the buses in a

manner that is illegal, improper or for hire. Operator may not remove the buses from the County of Los Angeles. Operator may not alter, mark or install equipment in the buses without City's prior written consent or where applicable, the consent of the El Monte City Council.

**THEFT, DESTRUCTION, AND SUBSTITUTION.** Operator assumes full responsibility for the theft, loss or destruction of the buses or any one of them while under Operator's possession or control, including but not limited to those periods in which the buses are being operated by Operator. In the event of such theft, loss or destruction to the buses or any one of them, Operator shall be required to compensate City for the full replacement cost of the vehicle.

**INSPECTION.** (a) City may, but does not assume the obligation to, inspect the buses at any time. If City asks to inspect a bus, Operator will advise City in writing of the location of the bus and allow the inspection. If the bus is damaged or there is excessive or unacceptable wear and use, City will decide if the bus is reasonably repairable. If the bus is reasonably repairable, City shall promptly make required repairs and deduct said repair costs from Contractor's monthly invoice, providing all backup documentation for said repairs.

(b) Operator further agrees to pay for a third-party inspection of the buses upon their return to City by Operator following the termination of this Agreement or the underlying Operating Agreement or any extension, amendment or modification thereto. Operator agrees to pay for all such repairs recommended by the third-party inspector in order to bring the vehicle into good operating condition and in compliance with the provisions of Section 18.

**DEFAULT.** Operator's failure to comply with or perform any term, condition or duty of this Agreement, the Operator or any extension, amendment or modification thereto shall constitute an event of default. If Operator is in default, City may pursue any and all rights and remedies provided by law, including the right to sue Operator for damages and/or recovery of the buses or any one of them.

In the event of a default, City may take the buses from Operator without demand. To take the buses, City may enter Operator's premises or the premises where the buses or any one of them are stored or placed, so long as it is done peacefully. If there is any personal property in the vehicle when City takes the buses from you, City will hold such items for Operator until such time as Operator elects to retrieve them.

Operator shall be charged and shall be obligated to pay all reasonable expenses associated with the taking of the buses. Operator will also be charged and be obligated to pay reasonable attorney's fees and legal expenses incurred by City, to the extent permitted by law.

In addition to any other default under this Agreement, the Operating Agreement

or any extension, amendment or modification thereto, Operator shall also be considered to be in default in the event of any of the following:

- (a) Operator or Operator's property become the subject of a proceeding in bankruptcy, receivership or insolvency; or
- (b) Operator makes any assignment for the benefit of creditors; or
- (c) Operator fails to comply with the insurance requirements of this Agreement, the Operating Agreement or any extension, amendment or modification thereto; or
- (d) Operator fails to maintain or repair the vehicle as required by this Agreement, the Operating Agreement or any extension, amendment or modification thereto; or
- (e) Operator fails to answer a traffic summons or pay fines when due; or
- (f) Operator allows the placement of a lien interest on the buses or fails to timely pay for the release of any such lien.

The foregoing list of defaults is a non-exhaustive list and a default may include any other failure to timely comply with any term, condition or duty set forth in this Agreement, the Operating Agreement or any extension, amendment or modification thereto.

**OWNERSHIP.** This Agreement constitutes a lease and City remains the owner of the buses. Operator may not and shall not transfer, sublease, rent, or do anything to interfere with City's ownership of the buses. Operator shall execute any and all additional documentation as City may request or require in order to evidence and establish City's ownership interest in the buses.

**INDEMNIFICATION.** Operator agrees to indemnify, defend and hold City and City's elected or appointed officials, officers, employees, agents and volunteers free and harmless from any and all claims.

**SEVERABILITY AND VENUE.** Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either Party to enter into or carry out, such decision shall not affect the validity of the remainder of the Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the Parties.

**TOTALITY OF AGREEMENT.** This Agreement, the Operating Agreement and any modifications, amendments or extensions thereto constitute the entire agreement of the Parties as to the subject matter of this Agreement.

**ASSIGNMENT.** Operator has no right to assign this Agreement or the lease created hereunder without the prior written consent of City in its sole discretion. Any such assignment without City's prior written consent shall be null and void and of no legal effect and shall constitute a material breach of this Agreement.